

ASSEMBLY BILL NO. 51—COMMITTEE ON JUDICIARY

FEBRUARY 11, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions relating to domestic relations. (BDR 11-457)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to domestic relations; revising the provisions relating to the determination of custody of a minor after the parents' separation or dissolution of marriage; providing a procedure for parties to an adoption to enter into an enforceable agreement that provides for postadoptive contact; requiring certain persons to notify the court of the existence of such an agreement; authorizing a natural parent who has entered into such an agreement to petition the court to prove the existence of the agreement, to enforce its terms and to bring certain civil actions related to the agreement; authorizing an adoptive parent who has entered into such an agreement to petition the court to enforce the terms of the agreement and to modify or terminate the agreement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Under existing law, until a court orders otherwise, married parents have joint
2 legal custody of their children. (NRS 125.465) In addition, existing law provides
3 that the best interest of the child must be the sole consideration of the court in
4 determining the custody of a child. Existing law requires the court to award custody
5 in a particular order of preference unless the best interest of the child requires
6 otherwise. In determining the best interest of the child, the court must consider a
7 list of factors. (NRS 125.480) Existing law also establishes a presumption that joint
8 custody would be in the best interest of the child if both parents have agreed to joint
9 custody. (NRS 125.490)
10 This bill requires the court, as a first preference, to award custody to both
11 parents jointly if the parents have agreed to joint custody. This bill then repeals the



12 presumption that joint custody would be in the best interest of the child if the
13 parents have agreed to joint custody. This bill makes it a second preference for the
14 court to award custody to both parents jointly or to either parent, according to
15 the best interest of the child, based upon the best judgment of the court considering
16 the facts of the case and subject to such conditions and limitations as the court
17 deems equitable. This bill also adds several factors to the list of factors that the
18 court must consider in determining the best interest of the child. The court must
19 also set forth its specific findings concerning the factors considered in determining
20 the best interest of the child.

21 Under existing law, the parental rights of a parent must be terminated before a
22 child is placed for adoption. (NRS 128.150) After an adoption, the natural parents
23 cannot exercise any rights over the child or his property. (NRS 127.160)
24 Administrative regulations, however, implicitly authorize agreements that provide
25 for postadoptive contacts or communications between the parties to an adoption.
26 (NAC 127.210) The Nevada Supreme Court has held that because there is no
27 statutory provision providing for the enforcement of an agreement for postadoptive
28 contacts or communications, such agreements are unenforceable unless
29 incorporated into the adoption decree. (*Birth Mother v. Adoptive Parents*, 118 Nev.
30 972 (2002))

31 This bill adopts the holding of the Nevada Supreme Court by providing that any
32 agreement for postadoptive contacts is enforceable only if the agreement is written,
33 signed by the parties, and incorporated in the order or decree of adoption.

34 This bill requires certain parties and other persons who are involved in an
35 adoption proceeding to notify the court of the existence of an agreement for
36 postadoptive contact. This bill further requires the court to question those parties
37 and persons as to their knowledge of the existence of such an agreement. If the
38 court determines that an agreement for postadoptive contact exists, the court is
39 required to incorporate the agreement into the order or decree of adoption.

40 In addition, this bill authorizes a natural parent who has entered into an
41 agreement for postadoptive contact to petition the court to prove the existence of
42 the agreement and to enforce the terms of the agreement. This bill further
43 authorizes an adoptive parent who has entered into such an agreement to petition
44 the court to enforce the terms of the agreement and to modify or terminate the
45 agreement. This bill provides that failure to comply with an agreement for
46 postadoptive contact may not be used as a basis for setting aside an adoption or
47 consent to an adoption.

48 Further, this bill authorizes a natural parent or adoptive parent, under certain
49 circumstances, to inspect only the portions of the court's files and records which
50 concern an agreement for postadoptive contact without obtaining a court order.
51 However, those portions of the file or records that are made available for inspection
52 by a natural parent or adoptive parent must not include any confidential information
53 such as information that would identify the natural parent or lead to the
54 identification of the natural parent if the identity of the natural parent is not
55 included in the agreement.

56 This bill authorizes a natural parent who has entered into such an agreement to
57 bring a civil action against certain persons who knowingly provide false
58 information to the court concerning the existence of the agreement and thereby
59 cause the court not to incorporate the agreement into the order or decree of
60 adoption.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 125.480 is hereby amended to read as follows:

125.480 1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. ~~[[If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly.]]~~

2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.

3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:

(a) To both parents jointly ~~[[pursuant to NRS 125.490 or to either parent.]],~~ *if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the child.*

(b) To both parents jointly, or to either parent, according to the best interest of the child, based upon the best judgment of the court considering the facts of the case and subject to such conditions and limitations as the court deems equitable. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent's application. ~~[[When awarding custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.]]~~

~~—(b)]~~ (c) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.

~~[(e)]~~ (d) To any person related within the third degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

~~[(d)]~~ (e) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

4. In determining the best interest of the child, the court shall consider ~~[[~~ *and set forth its specific findings concerning,* among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody. ~~[[~~



1 (b) Any nomination by a parent or a guardian for the child . ~~and~~

2 ~~and~~
3 (c) *Which parent is more likely to allow the child to have*
4 *frequent associations and a continuing relationship with the*
5 *noncustodial parent.*

6 (d) *The level of conflict between the parents.*

7 (e) *The ability of the parents to cooperate to meet the needs of*
8 *the child.*

9 (f) *The mental and physical health of the parents.*

10 (g) *The physical, developmental and emotional needs of the*
11 *child.*

12 (h) *The nature of the relationship of the child with each*
13 *parent.*

14 (i) *The ability of the child to maintain a relationship with any*
15 *sibling.*

16 (j) *Any history of parental abuse or neglect of the child or a*
17 *sibling of the child.*

18 (k) *The ability of each parent to prioritize the needs of the*
19 *child.*

20 (l) Whether either parent or any other person seeking custody
21 has engaged in an act of domestic violence against the child, a
22 parent of the child or any other person residing with the child.

23 5. Except as otherwise provided in subsection 6 or NRS
24 125C.210, a determination by the court after an evidentiary hearing
25 and finding by clear and convincing evidence that either parent or
26 any other person seeking custody has engaged in one or more acts of
27 domestic violence against the child, a parent of the child or any
28 other person residing with the child creates a rebuttable presumption
29 that sole or joint custody of the child by the perpetrator of the
30 domestic violence is not in the best interest of the child. Upon
31 making such a determination, the court shall set forth:

32 (a) Findings of fact that support the determination that one or
33 more acts of domestic violence occurred; and

34 (b) Findings that the custody or visitation arrangement ordered
35 by the court adequately protects the child and the parent or other
36 victim of domestic violence who resided with the child.

37 6. If after an evidentiary hearing held pursuant to subsection 5
38 the court determines that each party has engaged in acts of domestic
39 violence, it shall, if possible, then determine which person was the
40 primary physical aggressor. In determining which party was the
41 primary physical aggressor for the purposes of this section, the court
42 shall consider:

43 (a) All prior acts of domestic violence involving either party;



(b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;

(c) The likelihood of future injury;

(d) Whether, during the prior acts, one of the parties acted in self-defense; and

(e) Any other factors which the court deems relevant to the determination.

➔ In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies to both parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies only to the party determined by the court to be the primary physical aggressor.

7. As used in this section, "domestic violence" means the commission of any act described in NRS 33.018.

Sec. 2. Chapter 127 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 8, inclusive, of this act.

Sec. 3. 1. *The natural parent or parents and the prospective adoptive parent or parents of a child to be adopted may enter into an enforceable agreement that provides for postadoptive contact between:*

(a) The child and his natural parent or parents;

(b) The adoptive parent or parents and the natural parent or parents; or

(c) Any combination thereof.

2. *An agreement that provides for postadoptive contact is enforceable if the agreement:*

(a) Is in writing and signed by the parties; and

(b) Is incorporated into an order or decree of adoption.

3. *The identity of a natural parent is not required to be included in an agreement that provides for postadoptive contact. If such information is withheld, an agent who may receive service of process for the natural parent must be provided in the agreement.*

4. *A court that enters an order or decree of adoption which incorporates an agreement that provides for postadoptive contact shall retain jurisdiction to enforce, modify or terminate the agreement that provides for postadoptive contact until:*

(a) The child reaches 18 years of age;

(b) The child becomes emancipated; or

(c) The agreement is terminated.



1 5. *The establishment of an agreement that provides for*
2 *postadoptive contact does not affect the rights of an adoptive*
3 *parent as the legal parent of the child as set forth in NRS 127.160.*

4 Sec. 4. 1. *Each prospective adoptive parent of a child to be*
5 *adopted who enters into an agreement that provides for*
6 *postadoptive contact pursuant to section 3 of this act shall notify*
7 *the court responsible for entering the order or decree of adoption*
8 *of the child of the existence of the agreement as soon as*
9 *practicable after the agreement is established, but not later than*
10 *the time at which the court enters the order or decree of adoption*
11 *of the child.*

12 2. *Each:*

13 (a) *Director or other authorized representative of the agency*
14 *which provides child welfare services or the licensed child-placing*
15 *agency involved in the adoption proceedings concerning the child;*
16 *and*

17 (b) *Attorney representing a prospective adoptive parent, the*
18 *child, the agency which provides child welfare services or the*
19 *licensed child-placing agency in the adoption proceedings*
20 *concerning the child,*

21 ↪ *shall, as soon as practicable after obtaining actual knowledge*
22 *that the prospective adoptive parent or parents of the child and the*
23 *natural parent or parents of the child have entered into an*
24 *agreement that provides for postadoptive contact pursuant to*
25 *section 3 of this act, notify the court responsible for entering the*
26 *order or decree of adoption of the child of the existence of the*
27 *agreement.*

28 Sec. 5. 1. *Before a court may enter an order or decree of*
29 *adoption of a child, the court must address in person:*

30 (a) *Each prospective adoptive parent of the child to be*
31 *adopted;*

32 (b) *Each director or other authorized representative of the*
33 *agency which provides child welfare services or the licensed child-*
34 *placing agency involved in the adoption proceedings concerning*
35 *the child; and*

36 (c) *Each attorney representing a prospective adoptive parent,*
37 *the child, the agency which provides child welfare services or the*
38 *licensed child-placing agency in the adoption proceedings*
39 *concerning the child,*

40 ↪ *and inquire whether the person has actual knowledge that the*
41 *prospective adoptive parent or parents of the child and natural*
42 *parent or parents of the child have entered into an agreement that*
43 *provides for postadoptive contact pursuant to section 3 of this act.*



1 2. *If the court determines that the prospective adoptive parent*
2 *or parents and the natural parent or parents have entered into an*
3 *agreement that provides for postadoptive contact, the court shall:*

4 (a) *Order the prospective adoptive parent or parents to provide*
5 *a copy of the agreement to the court; and*

6 (b) *Incorporate the agreement into the order or decree of*
7 *adoption.*

8 **Sec. 6.** 1. *A natural parent who has entered into an*
9 *agreement that provides for postadoptive contact pursuant to*
10 *section 3 of this act may, for good cause shown:*

11 (a) *Petition the court that entered the order or decree of*
12 *adoption of the child to prove the existence of the agreement that*
13 *provides for postadoptive contact and to request that the*
14 *agreement be incorporated into the order or decree of adoption;*
15 *and*

16 (b) *During the period set forth in subsection 2 of section 7 of*
17 *this act, petition the court that entered the order or decree of*
18 *adoption of the child to enforce the terms of the agreement that*
19 *provides for postadoptive contact if the agreement complies with*
20 *the requirements of subsection 2 of section 3 of this act.*

21 2. *An adoptive parent who has entered into an agreement that*
22 *provides for postadoptive contact pursuant to section 3 of this act*
23 *may:*

24 (a) *During the period set forth in subsection 2 of section 7 of*
25 *this act, petition the court that entered the order or decree of*
26 *adoption of the child to enforce the terms of the agreement that*
27 *provides for postadoptive contact if the agreement complies with*
28 *the requirements of subsection 2 of section 3 of this act; and*

29 (b) *Petition the court that entered the order or decree of*
30 *adoption of the child to modify or terminate the agreement that*
31 *provides for postadoptive contact in the manner set forth in section*
32 *8 of this act.*

33 **Sec. 7.** 1. *Failure to comply with the terms of an agreement*
34 *that provides for postadoptive contact entered into pursuant to*
35 *section 3 of this act may not be used as a ground to:*

36 (a) *Set aside an order or decree of adoption;*

37 (b) *Revoke, nullify or set aside a valid release for or consent to*
38 *an adoption or a relinquishment for adoption; or*

39 (c) *Except as otherwise provided in section 12 of this act,*
40 *award any civil damages to a party to the agreement.*

41 2. *Any action to enforce the terms of an agreement that*
42 *provides for postadoptive contact must be commenced not later*
43 *than 120 days after the date on which the agreement was*
44 *breached.*



1 **Sec. 8. 1.** *An agreement that provides for postadoptive*
2 *contact entered into pursuant to section 3 of this act may only be*
3 *modified or terminated by an adoptive parent petitioning the court*
4 *that entered the order or decree which included the agreement.*
5 *The court may grant a request to modify or terminate the*
6 *agreement only if:*

7 *(a) The adoptive parent petitioning the court for the*
8 *modification or termination establishes that:*

9 *(1) A change in circumstances warrants the modification or*
10 *termination; and*

11 *(2) The contact provided for in the agreement is no longer*
12 *in the best interests of the child; or*

13 *(b) Each party to the agreement consents to the modification*
14 *or termination.*

15 **2.** *If an adoptive parent petitions the court for a modification*
16 *or termination of an agreement pursuant to this section:*

17 *(a) There is a presumption that the modification or*
18 *termination is in the best interests of the child; and*

19 *(b) The court may consider the wishes of the child involved in*
20 *the agreement.*

21 **3.** *Any order issued pursuant to this section to modify an*
22 *agreement that provides postadoptive contact:*

23 *(a) May limit, restrict, condition or decrease contact between*
24 *the parties involved in the agreement; and*

25 *(b) May not expand or increase the contact between the parties*
26 *involved in the agreement or place any new obligation on an*
27 *adoptive parent.*

28 **Sec. 9.** NRS 127.005 is hereby amended to read as follows:

29 127.005 The provisions of NRS 127.010 to 127.186, inclusive,
30 *and sections 3 to 8, inclusive, of this act* govern the adoption of
31 minor children, and the provisions of NRS 127.190, 127.200 and
32 127.210 and the provisions of NRS 127.010 to 127.186, inclusive,
33 where not inconsistent with the provisions of NRS 127.190, 127.200
34 and 127.210, govern the adoption of adults.

35 **Sec. 10.** NRS 127.140 is hereby amended to read as follows:

36 127.140 1. All hearings held in proceedings under this
37 chapter are confidential and must be held in closed court, without
38 admittance of any person other than the petitioners, their witnesses,
39 the director of an agency, or their authorized representatives,
40 attorneys and persons entitled to notice by this chapter, except by
41 order of the court.

42 2. The files and records of the court in adoption proceedings
43 are not open to inspection by any person except **[upon]**:



1 (a) *Upon* an order of the court expressly so permitting pursuant
2 to a petition setting forth the reasons therefor ~~for if~~;

3 (b) *If* a natural parent and the child are eligible to receive
4 information from the State Register for Adoptions ~~if~~; or

5 (c) *As provided pursuant to subsections 3, 4 and 5.*

6 3. *An adoptive parent who intends to file a petition pursuant*
7 *to section 6 or 8 of this act to enforce, modify or terminate an*
8 *agreement that provides for postadoptive contact may inspect only*
9 *the portions of the files and records of the court concerning the*
10 *agreement for postadoptive contact.*

11 4. *A natural parent who intends to file a petition pursuant to*
12 *section 6 of this act to prove the existence of or to enforce an*
13 *agreement that provides for postadoptive contact or to file an*
14 *action pursuant to section 12 of this act may inspect only the*
15 *portions of the files or records of the court concerning the*
16 *agreement for postadoptive contact.*

17 5. *The portions of the files and records which are made*
18 *available for inspection by an adoptive parent or natural parent*
19 *pursuant to subsection 3 or 4 must not include any confidential*
20 *information, including, without limitation, any information that*
21 *identifies or would lead to the identification of a natural parent if*
22 *the identity of the natural parent is not included in the agreement*
23 *for postadoptive contact.*

24 **Sec. 11.** NRS 127.171 is hereby amended to read as follows:

25 127.171 1. ~~For~~ *Except as otherwise provided in sections 3 to*
26 *8, inclusive, of this act, in* a proceeding for the adoption of a child,
27 the court may grant a reasonable right to visit to certain relatives of
28 the child only if a similar right had been granted previously pursuant
29 to NRS 125C.050.

30 2. The court may not grant a right to visit the child to any
31 person other than as specified in subsection 1.

32 **Sec. 12.** Chapter 41 of NRS is hereby amended by adding
33 thereto a new section to read as follows:

34 1. *A natural parent of an adopted child who has entered into*
35 *an agreement that provides for postadoptive contact pursuant to*
36 *section 3 of this act may bring a civil action against a person if:*

37 (a) *The person knowingly provided false information in*
38 *response to a question asked by a court pursuant to section 5 of*
39 *this act; and*

40 (b) *The provision of false information caused the court not to*
41 *incorporate the agreement that provides for postadoptive contact*
42 *in the order or decree of adoption pursuant to section 5 of this act.*

43 2. *If a person is liable to a natural parent of an adopted child*
44 *pursuant to subsection 1, the natural parent may recover his*



1 *actual damages, costs, reasonable attorney's fees and any punitive*
2 *damages that the facts may warrant.*

3 *3. The liability imposed by this section is in addition to any*
4 *other liability imposed by law.*

5 **Sec. 13.** NRS 125.490 is hereby repealed.

TEXT OF REPEALED SECTION

125.490 Joint Custody.

1. There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.

3. For assistance in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted.



